

AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 15, 2014
AMENDED IN ASSEMBLY MAY 13, 2014
AMENDED IN ASSEMBLY MAY 5, 2014
AMENDED IN ASSEMBLY APRIL 8, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2065

Introduced by Assembly Members Melendez, Garcia, and Gorell

February 20, 2014

An act to add Article 11 (commencing with Section 9149.30) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

AB 2065, as amended, Melendez. Legislative Employee Whistleblower Protection Act: Legislature: employees.

Existing law provides procedures for a person to file a complaint alleging violations of legislative ethics. Existing law also authorizes each house of the Legislature to adopt rules for its proceedings and to select committees necessary for the conduct of its business.

This act would prohibit ~~retaliation against~~ *interference with the right of* legislative employees, as defined, ~~who~~ *to make protected disclosures of ethics violations. It would also prohibit retaliation against legislative employees who have made protected disclosures.* This act would establish a procedure for legislative employees to report ~~acts of retaliation~~ *violations of the act to the Legislature.* The act would also

impose civil and criminal liability on a person who *interferes with a legislative employee's right to make a protected disclosure or who engages in retaliatory acts*, as specified.

By expanding the scope of crimes under the act, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 9149.30)
2 is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the
3 Government Code, to read:

4
5 Article 11. Legislative Employee Whistleblower Protection Act
6

7 9149.30. This article shall be known and may be cited as the
8 Legislative Employee Whistleblower Protection Act.

9 9149.31. The Legislature finds and declares that legislative
10 employees should be free to report ethical violations without fear
11 of retribution.

12 9149.32. For the purposes of this article, the following ~~words~~
13 *terms* have the following meanings:

14 (a) "Legislative employee" means an individual, other than a
15 Member of either house of the Legislature, who is currently
16 employed by either house of the Legislature.

17 (b) "Protected disclosure" means the filing of a complaint
18 alleging a violation of Article 2 of Chapter 1 of this part or of any
19 standard of conduct, as defined by the standing rules of either
20 house of the Legislature.

21 (c) "Use of official authority or influence" includes promising
22 to confer, or conferring, any benefit; effecting, or threatening to
23 effect, any reprisal; or taking, or directing others to take, or
24 recommending, processing, or approving, any personnel action,

1 including, appointment, promotion, transfer, assignment,
2 performance evaluation, suspension, or other disciplinary action.

3 9149.33. (a) A Member of the Legislature or legislative
4 employee shall not directly or indirectly use or attempt to use that
5 person's official authority or influence for the purpose of
6 intimidating, threatening, coercing, commanding, or attempting
7 to intimidate, threaten, coerce, or command a legislative employee
8 for the purpose of interfering with the right of the legislative
9 employee to make a protected disclosure.

10 (b) *Except to the extent that a Member of the Legislature is*
11 *immune from liability under the doctrine of legislative immunity,*
12 *a person who violates this section is subject to a fine not to exceed*
13 *ten thousand dollars (\$10,000) and imprisonment in a county jail*
14 *for a period not to exceed one year.*

15 (c) *In addition to all other penalties provided by law, except to*
16 *the extent that a Member of the Legislature is immune from liability*
17 *under the doctrine of legislative immunity, a person who violates*
18 *this section shall be liable in a civil action for damages brought*
19 *by a legislative employee.*

20 ~~(b)~~

21 (d) Nothing in this section shall be construed to authorize an
22 individual to disclose information otherwise prohibited by or under
23 law.

24 ~~(e)~~

25 (e) This section ~~does not~~ *is not intended* to prevent a supervisor,
26 manager, or other officer of the Legislature from taking, directing
27 others to take, recommending, or approving any personnel action
28 or from taking or failing to take a personnel action with respect to
29 any legislative employee if the supervisor, manager, or other officer
30 reasonably believes any action or inaction is justified on the basis
31 of evidence separate and apart from the fact that the person has
32 made a protected disclosure.

33 9149.34. A legislative employee may file a written complaint
34 with either house of the Legislature pursuant to its rules alleging
35 actual or attempted acts of reprisal, retaliation, threats, coercion,
36 or similar improper acts prohibited by Section 9149.33. The
37 complaint, together with a sworn statement under penalty of perjury
38 that the contents of the complaint are true, or are believed by the
39 affiant to be true, shall be filed within one year of the most recent
40 improper act complained about.

1 9149.35. Except to the extent that a Member of the Legislature
2 is immune from liability under the doctrine of legislative immunity,
3 a person who ~~violates Section 9149.33~~ *intentionally engages in*
4 *acts of reprisal, retaliation, threats, coercion, or similar acts*
5 *against a legislative employee for having made a protected*
6 *disclosure* is subject to a fine not to exceed ten thousand dollars
7 (\$10,000) and imprisonment in a county jail for a period not to
8 exceed one year.

9 9149.36. (a) In addition to all other penalties provided by law,
10 except to the extent that a Member of the Legislature is immune
11 from liability under the doctrine of legislative immunity, a person
12 who ~~violates Section 9149.33~~ *intentionally engages in acts of*
13 *reprisal, retaliation, threats, coercion, or similar acts against a*
14 *legislative employee for having made a protected disclosure* shall
15 be liable in a civil action for damages brought by a legislative
16 employee.

17 (b) (1) In any civil action, once it has been demonstrated by a
18 preponderance of *the* evidence that an activity protected by this
19 article was a contributing factor in the alleged retaliation against
20 a legislative employee, the burden of proof shall be on the
21 offending party to demonstrate by clear and convincing evidence
22 that the alleged action would have occurred for legitimate,
23 independent reasons even if the legislative employee had not made
24 a protected disclosure.

25 (2) Punitive damages may be awarded by the court if the acts
26 of the offending party are proven to be malicious. If liability is
27 established, the injured party shall also be entitled to reasonable
28 attorney's fees as provided by law.

29 (c) A legislative employee is not required to file a complaint
30 pursuant to Section 9149.34 before bringing an action for civil
31 damages.

32 (d) *This section is not intended to prevent a supervisor, manager,*
33 *or other officer of the Legislature from taking, directing others to*
34 *take, recommending, or approving any personnel action or from*
35 *taking or failing to take a personnel action with respect to any*
36 *legislative employee if the supervisor, manager, or other officer*
37 *reasonably believes any action or inaction is justified on the basis*
38 *of evidence separate and apart from the fact that the person has*
39 *made a protected disclosure.*

1 (e) *For purposes of this section, “legislative employee” shall*
2 *include a former employee of the Legislature.*

3 9149.37. This article does not diminish the rights, privileges,
4 or remedies of a legislative employee under any other federal or
5 state law.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.